

**Introduced by Senator Calderon**

February 23, 2007

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An act to amend Sections 12551, 12552, 12678, 12683, 12700, 12702, and 12726 of, and to add Sections 12703, 12704, 12705, 12727, and 12728 to, the Health and Safety Code, and to add Section 15301 to the Vehicle Code, relating to fireworks, and making an appropriation therefor.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 839, as introduced, Calderon. Fireworks.

(1) The State Fireworks Law generally regulates the sale, possession, use, and transportation of fireworks, including, but not limited to, dangerous fireworks, safe and sane fireworks, agricultural and wildlife fireworks, and emergency signaling devices, as defined. That law defines “agricultural and wildlife fireworks” as fireworks designed and intended by the manufacturer to be used to prevent damage to crops or unwanted occupancy of areas by animals or birds through the employment of sound or light or both. That law makes it unlawful for a person to use or discharge an agricultural and wildlife firework without first securing a permit from the State Fire Marshal.

This bill would additionally make it unlawful for a person to possess an agricultural and wildlife firework without first securing a permit from the State Fire Marshal. The bill would also make it unlawful to possess with the intent to use, or to use, an agricultural and wildlife firework contrary to its intended use. By creating a new crime, the bill would impose a state-mandated local program.

(2) That law defines an “emergency signaling device” as a pyrotechnic device designed and intended by the manufacturer to be used in a manner that provides a reasonable degree of safety to the user

and does not create a fire hazard when used according to the label of instructions. That law makes it unlawful for a person to sell, use, or discharge an emergency signaling device not registered by the State Fire Marshal.

This bill would additionally make it unlawful for a person to possess an emergency signaling device not registered by the State Fire Marshal. By creating a new crime, the bill would impose a state-mandated local program.

(3) That law requires the State Fire Marshal to adopt regulations relating to fireworks as may be necessary for the protection of life and property, and requires the State Fire Marshal to appoint deputies and employees as may be required to carry out the provisions of that law. That law provides that the State Fire Marshal, his or her salaried deputies, or a chief of a fire department, or his or her authorized representatives, a fire protection agency, or any other public agency authorized by statute to enforce the State Fire Marshal's regulations, may seize any fireworks, as described, and may charge a person whose fireworks are seized with specified costs of transporting, storing, and handling the seized fireworks. That law also makes it unlawful for a person to, among other matters, transport fireworks unless those fireworks have been classified and registered by the State Fire Marshal.

This bill would permit the State Fire Marshal to appoint arson bomb investigators and employees as may be required to carry out the provisions of that law. The bill would also make it unlawful for a person to possess a specified amount of dangerous fireworks, and upon conviction, is guilty of a public offense subject to a specified fine or by imprisonment in the county jail for not more than one year, or both. By creating a new crime, the bill would impose a state-mandated local program.

The bill would create the State Fire Marshal Fireworks Enforcement and Disposal Fund. The bill would provide that 75% of the penalty imposed by these provisions shall be deposited in the fund for use by the State Fire Marshal, upon appropriation by the Legislature, to regulate the fireworks industry. The bill would also provide that 25% of the penalty will remain with the local fire protection agency for administrative expenses. The bill would require the county treasurer in the county where the offense was committed, to forward those penalties as specified in these provisions. By imposing a higher level of service on a local agency, the bill would impose a state-mandated local program.

The bill would further require the State Fire Marshal to establish regulations to impose a fee, not to exceed \$0.03 per dollar, for every dollar of safe and sane fireworks sold in the state. The bill would provide that these regulatory fees shall be deposited in the State Fire Marshal Fireworks Enforcement and Disposal Fund and may be appropriated by the State Fire Marshal without regard to fiscal year. By creating a continuously appropriated fund for the regulatory fees established by the State Fire Marshal, the bill would make an appropriation.

(4) Existing law prohibits a driver of a commercial motor vehicle from operating a commercial motor vehicle for one year if the driver is convicted of a first violation of specified vehicle-related offenses or convicted of other specified crimes.

This bill would require the Department of Motor Vehicles, in conjunction with the State Fire Marshal, to develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who is operating a commercial motor vehicle while transporting dangerous fireworks having a gross weight of 10,000 pounds or more. The bill would also prohibit a driver of a commercial motor vehicle from operating a commercial motor vehicle for 3 years if the driver is convicted of transporting dangerous fireworks having a gross weight of 10,000 pounds or more.

(5) This bill would also make various technical, nonsubstantive changes to these provisions.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12551 of the Health and Safety Code is  
2 amended to read:

1     12551. (a) The State Fire Marshal shall appoint ~~such~~ deputies  
2 and employees as may be required to carry out the provisions of  
3 this part.

4     (b) *The State Fire Marshal may appoint arson bomb*  
5 *investigators and employees as may be required to carry out the*  
6 *provisions of this part.*

7     SEC. 2. Section 12552 of the Health and Safety Code is  
8 amended to read:

9     12552. The State Fire Marshal shall adopt ~~such~~ regulations  
10 relating to fireworks as may be necessary for the protection of life  
11 and property not inconsistent with the provisions of this part. ~~Such~~  
12 *These* regulations shall include, but not be limited to, provisions  
13 for the following:

14     (a) Granting of licenses and permits for the manufacture,  
15 wholesale, import, export, and sale of all classes of fireworks.

16     (b) Classification of fireworks and pyrotechnic devices.

17     (c) Registration of employees of licensees.

18     (d) Licenses and permits required for presentation of public  
19 displays.

20     (e) Granting of licenses and permits for research or  
21 experimentation with experimental or model rockets and missiles.

22     (f) Investigation, examination, and licensing of pyrotechnic  
23 operators of all classes.

24     (g) Registration of emergency signaling devices and the  
25 classification and use of exempt fireworks.

26     (h) Transportation of all classifications of fireworks, model  
27 rockets, emergency signaling devices, and exempt fireworks.

28     (i) *Fees for every dollar of safe and sane fireworks sold in this*  
29 *state as described in Section 12727.*

30     SEC. 3. Section 12678 of the Health and Safety Code is  
31 amended to read:

32     12678. (a) It is unlawful for ~~any~~ a person to *possess*, use, or  
33 discharge agricultural and wildlife fireworks without first securing  
34 a permit as provided in this part.

35     (b) *It is unlawful for a person to possess with the intent to use,*  
36 *or to use, agricultural and wildlife fireworks contrary to the*  
37 *fireworks intended use.*

38     SEC. 4. Section 12683 of the Health and Safety Code is  
39 amended to read:

1 12683. It is unlawful for ~~any~~ a person to *possess*, sell, use, or  
2 discharge ~~any~~ an emergency signaling device not registered by  
3 the State Fire Marshal.

4 SEC. 5. Section 12700 of the Health and Safety Code is  
5 amended to read:

6 12700. (a) Except as provided in Section 12702, ~~any and~~  
7 *subdivision (b)*, a person who violates any provision of this part,  
8 or any regulations issued pursuant to this part, is guilty of a  
9 misdemeanor, and upon conviction shall be punished by a fine of  
10 not less than five hundred dollars (\$500) ~~not~~ or more than one  
11 thousand dollars (\$1,000), or by imprisonment in the county jail  
12 for not exceeding one year, or by both ~~such~~ that fine and  
13 imprisonment.

14 (b) A person who violates any provision of this part, or any  
15 regulations issued pursuant to this part, by possessing dangerous  
16 fireworks shall be subject to the following:

17 (1) A person who possesses a gross weight, including packaging,  
18 of less than 25 pounds of unaltered dangerous fireworks, as defined  
19 in Section 12505, is guilty of a public offense, and upon conviction  
20 shall be punished by a fine of not less than five hundred dollars  
21 (\$500) or more than one thousand dollars (\$1,000), or by  
22 imprisonment in the county jail for not exceeding one year, or both  
23 that fine and imprisonment.

24 (2) A person who possesses a gross weight, including packaging,  
25 of not less than 25 pounds or more than 1,000 pounds of unaltered  
26 dangerous fireworks, as defined in Section 12505, is guilty of a  
27 public offense, and upon conviction shall be punished by a fine of  
28 not less than one thousand dollars (\$1,000) or more than five  
29 thousand dollars (\$5,000), or by imprisonment in the county jail  
30 for not exceeding one year, or both that fine and imprisonment.

31 (3) A person who possesses a gross weight, including packaging,  
32 of not less than 1,000 pounds or more than 10,000 pounds of  
33 unaltered dangerous fireworks, as defined in Section 12505, is  
34 guilty of a public offense, and upon conviction shall be punished  
35 by a fine of not less than five thousand dollars (\$5,000) or more  
36 than ten thousand dollars (\$10,000), and by imprisonment in the  
37 county jail for not exceeding one year.

38 (4) A person who possesses a gross weight, including packaging,  
39 of more than 10,000 pounds of unaltered dangerous fireworks, as  
40 defined in Section 12505, is guilty of a public offense, and upon

1 *conviction shall be punished by a fine of not less than ten thousand*  
2 *dollars (\$10,000) or more than fifty thousand dollars (\$50,000),*  
3 *and by imprisonment in the county jail for not exceeding one year.*

4 *(c) Subdivision (b) shall not apply to a person who holds and*  
5 *is operating within the scope of a valid license as described in*  
6 *Section 12516 or valid permit as described in Section 12522.*

7 SEC. 6. Section 12702 of the Health and Safety Code is  
8 amended to read:

9 12702. Notwithstanding the provisions of Section 12700:

10 (a) ~~Any~~A person who violates this part by selling, giving, or  
11 delivering any dangerous fireworks to any person under 18 years  
12 of age is guilty of a misdemeanor and upon a first conviction shall  
13 be punished as prescribed in Section 12700.

14 (b) Upon ~~any~~a second or subsequent conviction of the offense,  
15 the person shall be punished by the penalties of ~~a fine of not less~~  
16 ~~than five hundred dollars (\$500) nor more than one thousand~~  
17 ~~dollars (\$1,000) the applicable fine described in subdivision (b)~~  
18 *of Section 12700, an additional fine of five thousand dollars*  
19 *(\$5,000), and by imprisonment in the county jail for one year. The*  
20 *person shall not be granted probation and the execution of the*  
21 *sentence imposed upon the person shall not be suspended by the*  
22 *court.*

23 ~~(e) Any person who violates this part involving any dangerous~~  
24 ~~fireworks item, as defined in Section 12505, or any combination~~  
25 ~~of any dangerous fireworks items, having the total net weight of~~  
26 ~~explosive material of 7,500 grains or more, is guilty of a public~~  
27 ~~offense, and upon conviction thereof shall be punished by~~  
28 ~~imprisonment in the state prison, or in the county jail for not more~~  
29 ~~than one year, or by a fine of not more than five thousand dollars~~  
30 ~~(\$5,000), or by both the fine and imprisonment.~~

31 SEC. 7. Section 12703 is added to the Health and Safety Code,  
32 to read:

33 12703. (a) The State Fire Marshal shall, in conjunction with  
34 the Department of Motor Vehicles, develop regulations and  
35 procedures to temporarily suspend the commercial motor vehicle  
36 license of a person who is operating a commercial motor vehicle  
37 while transporting unaltered dangerous fireworks, as defined in  
38 Section 12505, having a gross weight, including packaging, of  
39 10,000 pounds or more.

1 (b) A driver of a commercial motor vehicle shall not operate a  
2 commercial motor vehicle for three years if the driver is convicted  
3 of transporting unaltered dangerous fireworks, as defined in Section  
4 12505, having a gross weight, including packaging, of 10,000  
5 pounds or more, as described in Section 15301 of the Vehicle  
6 Code.

7 (c) This section shall not apply to a person who holds and is  
8 operating within the scope of a valid license as described in Section  
9 12516 or valid permit as described in Section 12522.

10 SEC. 8. Section 12704 is added to the Health and Safety Code,  
11 to read:

12 12704. Notwithstanding Section 1463 of the Penal Code, all  
13 fines and forfeitures imposed by or collected in any court of this  
14 state, as a result of citations issued by the State Fire Marshal or  
15 salaried deputy state fire marshals employed by the State of  
16 California, for any violation of subdivision (b) of Section 12700  
17 or of any regulation adopted pursuant to subdivision (b) of Section  
18 12700, shall be deposited, as soon as practicable after the receipt  
19 of the fine or forfeiture, with the county treasurer of the county in  
20 which the court is situated. Amounts deposited pursuant to this  
21 section shall be paid at least once a month as follows:

22 (a) Seventy-five percent to the Treasurer, by warrant of the  
23 county auditor drawn upon the requisition of the clerk or judge of  
24 the court, for deposit in the State Fire Marshal Fireworks  
25 Enforcement and Disposal Fund, as described in Section 12728,  
26 on order of the Controller. At the time of the transmittal, the county  
27 auditor shall forward to the Controller, on the form or forms  
28 prescribed by the Controller, a record of the imposition, collection,  
29 and payments of the fines or forfeitures.

30 (b) Twenty-five percent to the local fire protection agency in  
31 the county in which the offense was committed to reimburse the  
32 local fire protection agency for administrative expenses.

33 SEC. 9. Section 12705 is added to the Health and Safety Code,  
34 to read:

35 12705. (a) If a person charged with a violation of this part is  
36 released pursuant to Section 853.6 of the Penal Code or otherwise  
37 released, and the magistrate fixes an amount of bail that in his or  
38 her judgment, in accordance with Section 1275 of the Penal Code,  
39 is reasonable and sufficient for the appearance of the defendant,  
40 the amount of that bail equals or exceeds the minimum fine

1 described in Section 12700, and the defendant pays the amount of  
2 that bail, the magistrate may use the procedure described in  
3 subdivision (b).

4 (b) At the time the case is called for arraignment before the  
5 magistrate, if the defendant does not appear, either in person or  
6 by counsel, the magistrate may declare the bail forfeited, and may,  
7 in his or her discretion, order that no further proceedings shall be  
8 had in the case.

9 (c) Upon the making of the order that no further proceedings  
10 be had, all sums deposited as bail shall immediately be paid into  
11 the county treasury for distribution pursuant to Section 12704.

12 SEC. 10. Section 12726 of the Health and Safety Code is  
13 amended to read:

14 12726. (a) The dangerous fireworks seized pursuant to this  
15 part shall be disposed of by the State Fire Marshal in the manner  
16 prescribed by the State Fire Marshal at any time after the final  
17 determination of proceedings under Section 12724, or upon final  
18 termination of proceedings under Section 12593, whichever is  
19 later. If no proceedings are commenced pursuant to Section 12724,  
20 the State Fire Marshal may dispose of the fireworks after all of the  
21 following requirements are satisfied:

22 ~~(a)–~~

23 (1) A random sampling of the dangerous fireworks has been  
24 taken, as defined by regulations adopted by the State Fire Marshal  
25 pursuant to Section 12552.

26 ~~(b)–~~

27 (2) The analysis of the random sampling has been completed.

28 ~~(c)–~~

29 (3) Photographs have been taken of the dangerous fireworks to  
30 be destroyed.

31 ~~(d)–~~

32 (4) The State Fire Marshal has given written approval for the  
33 destruction of the dangerous fireworks. This approval shall specify  
34 the total weight of the dangerous fireworks seized, the total weight  
35 of the dangerous fireworks to be destroyed, and the total weight  
36 of the dangerous fireworks not to be destroyed.

37 (b) *To carry out the purposes of this section, the State Fire*  
38 *Marshal shall acquire and use statewide mobile dangerous*  
39 *fireworks destruction units to collect and destroy seized dangerous*  
40 *fireworks from local and state agencies.*

1 SEC. 11. Section 12727 is added to the Health and Safety Code,  
2 to read:

3 12727. (a) The State Fire Marshal shall establish regulations  
4 to assess a fee, not to exceed three cents (\$0.03) per dollar, for  
5 every dollar of safe and sane fireworks sold in this state to be  
6 deposited in the State Fire Marshal Fireworks Enforcement and  
7 Disposal Fund described in Section 12728.

8 (b) In determining the appropriate amount of the fees described  
9 in subdivision (a), the State Fire Marshal shall consult with the  
10 fireworks industry.

11 SEC. 12. Section 12728 is added to the Health and Safety Code,  
12 to read:

13 12728. (a) The State Fire Marshal Fireworks Enforcement and  
14 Disposal Fund is hereby established in the State Treasury.

15 (b) All of the moneys collected pursuant to Section 12704 shall  
16 be deposited in the fund and shall be available, upon appropriation  
17 by the Legislature, to the State Fire Marshal for the exclusive use  
18 in statewide programs for the enforcement, prosecution related to,  
19 disposal, and management of seized dangerous fireworks, and for  
20 the education of local fire departments and fire protection agencies  
21 in the proper handling and management of dangerous fireworks.

22 (c) All of the moneys collected pursuant to Section 12727 shall  
23 be deposited in the fund and is hereby appropriated, without regard  
24 to fiscal years, to the State Fire Marshal to regulate the fireworks  
25 industry.

26 SEC. 13. Section 15301 is added to the Vehicle Code, to read:

27 15301. The Department of Motor Vehicles, in conjunction with  
28 the State Fire Marshal, shall develop regulations and procedures  
29 to temporarily suspend the commercial motor vehicle license of a  
30 person who is operating a commercial motor vehicle while  
31 transporting dangerous fireworks having a gross weight of 10,000  
32 pounds or more. A driver of a commercial motor vehicle shall not  
33 operate a commercial motor vehicle for three years if the driver is  
34 convicted of transporting dangerous fireworks having a gross  
35 weight of 10,000 pounds or more.

36 SEC. 14. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution for certain  
38 costs that may be incurred by a local agency or school district  
39 because, in that regard, this act creates a new crime or infraction,  
40 eliminates a crime or infraction, or changes the penalty for a crime

1 or infraction, within the meaning of Section 17556 of the  
2 Government Code, or changes the definition of a crime within the  
3 meaning of Section 6 of Article XIII B of the California  
4 Constitution.

5 However, if the Commission on State Mandates determines that  
6 this act contains other costs mandated by the state, reimbursement  
7 to local agencies and school districts for those costs shall be made  
8 pursuant to Part 7 (commencing with Section 17500) of Division  
9 4 of Title 2 of the Government Code.